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IN THE

Supreme Court of the United States

October Term, 1966

No. ~~892~~ 34

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Petitioner,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

ABRAHAM E. FREEDMAN,
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INDEX.

INDEX (Continued).

TABLE OF CITATIONS.

Cases: Page

Rules:

Statutes:

IN THE

Supreme Court of the United States.

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No.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Petitioner,

v.

PHILADELPHIA MARINE TRADE ASSOCIATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Local 1291, International Longshoremen's Association, respectfully prays that a Writ of Certiorari issue for review of the final judgment of the United States Court of Appeals for the Third Circuit, entered in the above-entitled matter on September 22, 1966.

OPINION AND ORDERS OF THE COURTS BELOW.

The District Court for the Eastern District of Pennsylvania issued no opinion; the Order of said Court, unreported, is printed as Appendix B hereto (p. 4a). The opinion of the Court of Appeals for the Third Circuit, reported at — F. 2d —, is printed as Appendix C hereto (p. 5a). The Judgment of said Court of Appeals is printed as Appendix D hereto (p. 18a). The Order of the Court of Appeals denying rehearing is printed as Appendix E hereto (p. 19a). The Order of the District Court for the Eastern District of Pennsylvania, holding petitioner in contempt and levying fine is printed as Appendix F hereto (p. 20a).

JURISDICTION.

The judgment of the Court of Appeals was entered on August 11, 1966 (*infra*, p. 18a). The order denying rehearing was entered on September 22, 1966 (p. 19a). The jurisdiction of this Court is invoked under 28 U. S. C., section 1254(1).

QUESTIONS PRESENTED.

Where an arbitrator's decision simply interpreted a provision of a collective bargaining agreement, and the District Court entered an order requiring that decision "be specifically enforced" and, in response to an inquiry by counsel for clarification, the District Judge refused to state whether that order enjoined any strike or work stoppage but thereafter held the union in contempt and imposed an extraordinary and confiscatory fine when the union members engaged in a work stoppage:

(a) was not the District Court's order in direct conflict with this Court's decision in *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195, which holds that the District Court is deprived of jurisdiction by the Norris-LaGuardia Act, 29 U. S. C. A. 104 to enforce an arbitrator's award, if the effect of the Court's order is to enjoin a strike or work stoppage?

(b) did not the District Court commit such serious, prejudicial error as to require intervention by this Court, where it ignored and showed a complete disregard for the Federal Rules of Civil Procedure and particularly where it failed to clarify and state the reasons for its restraining order, as required by F. R. C. P. 65(d), and where it failed to make findings of fact and conclusions of law as required by F. R. C. P. 52(a), and thereafter held the union in contempt of its unclear and unexplained order?

STATUTES AND RULES INVOLVED.

The statutory provisions and rules involved are: Norris-LaGuardia Act, Section 4, 29 U. S. C. A. 104, Supreme Court Rule 19, Federal Rules of Civil Procedure 52(a) and 65(d).

STATEMENT OF THE CASE.

On April 26, 1965, T. Hogan Corporation and several other Philadelphia stevedoring concerns in contractual relationship with petitioner union, after having hired longshoremen for an 8:00 A. M. start, changed the starting time to 2:00 P. M. because of inclement weather, and offered one hour of guarantee time for the loss of the morning's employment, under the "set back"[1] provision of the contract. The union claimed, inter alia, that the inclement weather clause[2] applied, which provided for a four-hour guarantee. The matter was submitted to arbitration, and the arbitrator ruled that the "set back" clause standing by itself gave the employer the right to set the employment back without qualification. He refused to consider the inclement weather clause or any other provision of the agreement.[3] This was the sum total of the arbitrator's award. It was not accompanied by any order to return to work.

On July 29, 1965, another dispute arose when Nacirema Operating Co., another employer, not involved in the earlier dispute, changed the starting time because of inclement weather, and offered a one-hour guarantee under the set back clause instead of the four-hour guarantee under the inclement weather clause. The union demanded arbitration, as required by the contract,[4] but the employer frustrated the

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1. Section 10(6) of settlement memorandum—page 12a of appellant's appendix.

2. Section 9(h), page 11, of Longshoremen's Agreement—Exhibit B of appellant's appendix.

3. The arbitrator refused to hear arguments when the evidence was concluded, nor would he receive briefs from the parties. He made his ruling on the "set back" clause, as though it was the sole agreement between the parties.

4. "All disputes of any kind or nature whatsoever arising under the terms and conditions" of the collective bargaining agreement were required to be submitted to arbitration—Section 28, p. 17—of Exhibit B, even when the identical issue is involved (Opinion of Arbitrator, April 19, 1955).

arbitration by bringing the instant action to make the arbitrator's decision in the earlier dispute applicable to all future disputes without further arbitrations, contrary to the express language of the arbitration clause in the agreement, and to the past practice, and to restrain work stoppages in connection therewith. The District Judge held that the suit was *moot,* because the men had returned to work (77a, 106a). He denied the union's motion to dismiss the complaint for lack of jurisdiction,[5] and for mootness, and "retained jurisdiction" of the case so that if "anything arises", he would "handle it at that time" (57a-58a).[6]

A new dispute arose on September 13, 1965, when a new group of employers recessed the morning's employment because of inclement weather, and offered only the one-hour guarantee under the set-back clause. The union claimed the four-hour guarantee under the inclement weather clause. The employers refused and "reported" ex parte to the District Judge, who scheduled a hearing on the basis of the "facts" reported. The union moved that the "facts" be pleaded as required by the Federal Rules of Civil Procedure. This motion was denied. The union repeated the motion to dismiss for lack of jurisdiction. This, too, was denied. The hearing proceeded on the "facts" reported to the Judge. At the conclusion of the

5. Counsel cited this Court's decision in *Sinclair Refining Co. v. Atkinson,* 370 U. S. 195, but the Court summarily denied the motion without examining the decision (106a).

6. The Court thereby also ignored this Court's decision in *Amalgamated Assn., etc. v. Wisc. E. R. B.,* 340 U. S. 416, 95 L. Ed. 389 (1951), which held that mootness deprived a Federal court of jurisdiction and required a dismissal of the complaint. See *Todd v. Joint Apprent. Committee,* 332 F. 2d 243, 247 (7th Cir. 1964). Even if a court may once have had jurisdiction, it cannot extend its power over the parties as to later disputes in perpetuity. *De Korwin v. First National Bank,* 84 F. Supp. 918, 924-25 (N. D. Ill.), affd. in part, rev. in part on other grounds, 179 F. 2d 347 (7th Cir. 1949). This action, itself in violation of specific precepts of this Court, must be reviewed and reversed.

hearing, the Court entered the order requiring that the arbitrator's award "be specifically enforced" and that the union "comply" with said award. Since the arbitrator's award simply construed Section 10(6) of the agreement, union counsel requested clarification and particularly to determine whether the Court's order restrained a strike or work stoppage. The Court flatly refused to amplify his order and to make findings, as required by the Federal Rules of Civil Procedure.[7] Since the order was actually

7. The record shows a determined effort by counsel for clarification, and an even greater determination by the District Judge to keep defendants in the dark (143a-144a):

"THE COURT: I will sign this order.

"MR. FREEDMAN: Well, what does it mean, Your Honor?

"THE COURT: That you will have to determine, what it means.

"MR. FREEDMAN: Well, I am asking. I have to give my client advice and I don't know what it means. I am asking Your Honor to tell me what it means. It doesn't——

"THE COURT: You handled the case. You know about it. You are arguing it doesn't fit into this case.

"MR. FREEDMAN: I am telling you very frankly now I don't know what this order means, this proposed order. It says, 'Enforcement of the award.' Now, just what does it mean? Are we being restrained from a work stoppage? . . ."

"THE COURT: The Court has acted. This is the order.

"MR. FREEDMAN: Well, won't Your Honor tell me what it means?

"THE COURT: You read the English language and I do.

"MR. FREEDMAN: I will ask you, but it doesn't say it. I can't understand it. I am telling Your Honor I don't understand it. Now, perhaps Your Honor can explain it to me. Does this mean that the union cannot engage in a strike or refuse to work or picket?

"THE COURT: You know what the arbitration was about. You know the result of the arbitration.

"MR. FREEDMAN: The arbitration here was under a specific set of facts, involved an interpretation of the contract under a specific set of facts, and he made that interpretation. Now, how do you enforce it? That case is over and done with. These are new cases. Your Honor is changing the contract of the parties

intended to restrain a work stoppage, it should have spelled out in specific and unequivocal terms the activities restrained.

On February 24, 1966, another dispute arose when the employers again refused to pay the four-hour guarantee when they changed the starting time because of inclement weather. This time a group of the longshoremen went out in a "wildcat" strike, refusing to heed the pleas of their own leaders that they wait and give the union another opportunity to have the latest dispute arbitrated. The District Judge held a hearing [8] on a contempt charge and, although the evidence established without dispute that it was a "wildcat" strike, the Judge held the union in contempt for the "mass action" of the members and fined the union $100,000.00 per day for each day of the work stoppage.[9]

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when you foreclose them from going to arbitration on this point again.

"THE COURT: I have signed the order. Anything else to come before us?

"MR. FREEDMAN: I know, but Your Honor is leaving me in the sky. I don't know what to say to my client."

8. The District Judge denied a motion for a jury trial under 18 U. S. C. A. 3692 which specifically provides for a jury trial in all cases involving "labor disputes".

9. When the union requested arbitration, the employers seized on this request as a violation of and contempt for the Court's order.

REASONS FOR GRANTING THE WRIT.

I. The Decision Below Is in Direct Conflict With the Holding of This Court in *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195, and With the Norris-LaGuardia Act, Because It Did, in Fact, Enjoin a Work Stoppage Arising Out of a Labor Dispute.

There is no doubt that a Federal court is without jurisdiction to issue an order which will enjoin a work stoppage. The Court below concluded, however, that the order of the District Judge was "not an injunction", that it could not "be reasonably construed as a restraining order", and that "it simply calls upon the defendant for specific performance of the Arbitration Award." The bare, undisputed fact is, however, that it did enjoin a work stoppage and the union was held in contempt solely because of a work stoppage. Regardless of the label placed upon the order by the Court below, it was, in fact, a labor injunction and, thus, breached the Norris-LaGuardia Act, 29 U. S. C. A. 104, as was specifically held by this Court in *Sinclair Refining Co. v. Atkinson*, 370 U. S. 195, 8 L. Ed. 2d 440 (1962).

The question here presented to this Court is whether the law will look to substance and effect to determine the nature of a judicial act, or will be blinded by its wrappings. There is no doubt from the facts leading up to the order and from the manner in which it was enforced by contempt and fine that it was requested, litigated and issued specifically *to enjoin a work stoppage.* The intent and policy of the Norris-LaGuardia Act may not be defeated by calling a labor injunction by another name.

In *Sinclair*, as here, a complaint was filed under Section 301 of the National Labor Relations Act, 29 U. S. C. A. 185(a), alleging a contract which provided for compulsory arbitration and, also, prohibited work stoppages. Sinclair sought an order enjoining work stoppage. This Court held that Section 4 of Norris-LaGuardia Act "withdraws juris-

diction from the federal courts to issue injunctions to prohibit the refusal to perform work or remain in any relation of employment in cases involving any labor dispute." This Court there also specifically held that Section 301 of the Labor Act, in gaving courts jurisdiction of suits for breach of collective bargaining agreements, did *not* impliedly repeal Norris-LaGuardia. Analyzing and discussing the relation between Norris-LaGuardia and contracts providing for arbitration and containing no-strike clauses, the opinion fully disposed of contentions of the employer there, echoed in this case, that since Section 301 of the Labor Act came after Norris-LaGuardia, it thereby put Federal Courts "back into the business" of issuing injunctions against work stoppages (370 U. S. at 213-14, 8 L. Ed. 2d at 451-52). This Court made it clear that Norris-LaGuardia is, today, as vital a prohibition of the labor injunction, however it may be termed, as it ever was (370 U. S. at 203-04, 8 L. Ed. 2d at 446-47).

The Court below extracted that part of the *Sinclair* decision which provides that Norris-LaGuardia does not prohibit a court order which compels the parties *to go to* arbitration and, on this basis, sustained the order of the District Court which *"enforced"* the arbitrator's award. What the Court below failed to recognize in Sinclair was that "enforcement" of the arbitration award where it enjoined a work stoppage is an entirely different matter from an order compelling arbitration, and it was specifically proscribed by Norris-LaGuardia. The Court below not only stopped short of the significant part of the *Sinclair* opinion, but the language relied on demonstrates, on its very face, that this Court was there discussing enforcement of *agreements to go to arbitration*, not enforcement of an arbitrator's award, which must still meet the test of Norris-LaGuardia: an arbitrator's award will *not* be "enforced", said this Court, if it would violate the Norris-LaGuardia Act by *having the effect* of enjoining a work stoppage.

Textile Workers Union v. Lincoln Mills, 353 U. S. 448, 1 L. Ed. 2d 972 (1957) and *United Steelworkers v. Warrior and Gulf Navigation Co.,* 363 U. S. 574, 4 L. Ed. 2d 1409, also cited by the opinion below, held that parties may be compelled to submit arbitrable issues to arbitration in accordance with an agreement, and that the merits of such an issue are for the arbitrator. Both of these cases were similarly invoked in the *Sinclair* case as standing for the principle proposed by the Court below in this case. This Court in Sinclair quickly and with no reservation answered and disposed of these very contentions. It pointed out that in *Lincoln Mills* it had merely held that an order compelling the parties to submit to arbitration as agreed was not within the proscription of the Norris-LaGuardia Act. However, this Court was emphatic in stating (370 U. S. at 212, 8 L. Ed. 2d at 451):

> "In upholding the jurisdiction of the federal courts to issue such an order against a challenge based upon the Norris-LaGuardia Act, the Court pointed out that the equitable relief granted in that case—a mandatory injunction to carry out an agreement to arbitrate—*did not enjoin any one of the kinds of conduct which the specific prohibitions of the Norris-LaGuardia Act withdrew from the injunctive powers of United States courts.* An injunction against work stoppages, peaceful picketing or the non-fraudulent encouraging of those activities would, however, prohibit the precise kinds of conduct which subsections (a), (e) and (i) of § 4 of the Norris-LaGuardia Act unequivocally say cannot be prohibited."

This Court, in *Sinclair,* specifically decided the issue here involved, reaching the exact opposite conclusion from the Court below. In *Sinclair,* the employer argued that *Lincoln Mills* and the *Steelworkers* cases required this Court to overrule Congress' refusal to repeal or modify the Norris-LaGuardia Act, because "injunctions against peace-

ful strikes are necessary to make the arbitration process effective". This Court completely rejected this argument, emphasizing that Congress had also rejected it (370 U. S. at 213, 8 L. Ed. 2d at 451-52):

> ". . . To the extent that those cases relied upon the proposition that the arbitration process is 'a kingpin of federal labor policy,' we think that proposition was founded not upon the policy predilections of this Court but upon what Congress said and did when it enacted § 301. Certainly we cannot accept any suggestion which would undermine those cases by implying that the Court went beyond its proper power and itself 'forged . . . a kingpin of federal labor policy' inconsistent with that section and its purpose. Consequently, we do not see how cases implementing the purpose of § 301 can be said to have freed this Court from its duty to give effect to the plainly expressed congressional purpose with regard to the continued application of the anti-injunction provisions of the Norris-LaGuardia Act. *The argument to the contrary seems to rest upon the notion that injunctions against peaceful strikes are necessary to make the arbitration process effective. But whatever might be said about the merits of this argument, Congress has itself rejected it. In doing so, it set the limit to which it was willing to go in permitting courts to effectuate the congressional policy favoring arbitration and it is not this Court's business to review the wisdom of that decision.*" (Emphasis supplied.)

In concluding that Congress, in legislating Section 301 of the Taft-Hartley Act, did not intend to whittle away the effect of the proscription in Norris-LaGuardia, this Court said (370 U. S. at 213-14, 8 L. Ed. 2d at 452) that Section 301 does not conflict with Norris-LaGuardia, so far as concerned the policy "in favor of enforcement of agreements to arbitrate", since it does not impair the employer's right

to obtain an order "compelling arbitration". However, this Court pointedly held, upon the question whether an employer can enjoy the benefits of an *injunction* along with the right to sue for breach of agreement which was given by Section 301:

> ". . . And as we have already pointed out, *Congress was not willing to insure that enjoyment to an employer at the cost of putting the federal courts back into the business of enjoining strikes and other related peaceful union activities.*" (Emphasis supplied.)

Thus, this Court has made it clear that Norris-LaGuardia deprives the courts of jurisdiction to enter *any* order which will prohibit a work stoppage. The indirect approach, through an arbitrator, does not change the situation. The sole basis proffered to justify the position below is the existence of Section 301 as a neutralizer of Norris-LaGuardia. But this Court has previously cast this argument aside—permitting Section 301 to be the vehicle for an order *only* for "specific performance" of an agreement *to submit to* arbitration—so long as *that* does not inhibit labor's basic right to stop work. But the indirect approach to the labor injunction, by whatever means, is forbidden. Indeed, this Court made it clear that a Federal Court may *not* enter *any* order that would interfere with the rights guaranteed by Section 7 of the Labor Act, which are specifically protected by Norris-LaGuardia.

Since the court lacks jurisdiction to enter an injunction on its own, it certainly lacks jurisdiction to enter an injunction by "enforcement" of an arbitrator's award. In *Sinclair,* this Court expressly held that Norris-LaGuardia proscribes an injunction in *either* event. Specifically, said the Court in *Sinclair,* "the circumstances that the alleged work stoppages and strikes may have constituted a breach of a collective bargaining agreement [does not] alter the plain fact that a 'labor dispute' within the meaning of the Norris-LaGuardia Act is involved" (U. S. at 200, L. Ed. 2d at 445).

In the instant case when the first order of the District Court was handed down, its real meaning and what it ordered to be done or not done, was a subject solely for speculation. When the next dispute arose with the accompanying work stoppage, the employer made his ex parte "report" to the District Judge and demanded that petitioner be held in contempt. The union demanded arbitration of the new dispute, but the employer refused. In holding the union in contempt the District Judge specified the activity as a "strike" and "refusal to work", and levied a fine of $100,000.00 per day until the men returned to work. This Court, in *Sinclair,* held that it was precisely this kind of activity which was protected by Norris-LaGuardia.

The decision of the Court below would repeal that part of the Norris-LaGuardia Act which deprives the Federal Courts of jurisdiction to enjoin strikes or work stoppages in order to "give effect" to an arbitrator's award. This Court said, in *Sinclair,* that Congress deliberately kept Norris-LaGuardia intact and did not intend to put the Federal Courts back into the injunction business. The lower court's decision is a clear violation of the Congressional intent and of this Court's decision in *Sinclair.* Certiorari should be granted and the decision below should be reversed.

II. The Refusal of the District Court to Clarify or Explain the Nature of the Conduct Compelled by Its Mandatory or Prohibitory Order, Upon Specific Request, and to Give Reasons for Its Issuance and Make Findings of Fact and Conclusions of Law, Is in Violation of F. R. C. P. 52(a) and 65(d). Such Action by the District Court, Sanctioned by the Court of Appeals, Is a Prejudicially Substantial Departure From Proper Judicial Procedure, Calling for the Exercise of This Court's Power of Supervision: Rule 19.

The Court below holds that the failure of the District Judge to comply with the Rules of Procedure as to giving reasons for its order and making findings and conclusions

"was inconsequential", and was "minor and in no way decisional". This is a gravely erroneous conclusion to reach, in the presence of an ambiguous order which left the union in the dark, and, if enforced, will leave a contempt order standing and the union wiped out by the extraordinary penalty.[10]

Although the plaintiff and the Courts below have studiously labelled the order below as one of "specific performance of an arbitration award" the real effect of the order and, then, the subsequent contempt order, make it obvious that the order actually was intended and was, in fact, a restraint against work stoppage and, thus, was in clear violation of Norris-LaGuardia. The effort to make its injunction against work stoppage appear to be something else resulted in an order which was ambiguous and confusing. When petitioner's counsel was apprised of the language of this order, he requested clarification, but this was refused.[10] If the District Court had complied with Rules 52(a) and 65(d), the real meaning and effect of the order would have been apparent. Instead, petitioner had to await the subsequent *contempt* order, which demonstrates that the District Judge really was enjoining a work stoppage. The subsequent contempt order need merely be read to demonstrate this (Appendix F, *infra*).

Rule 52(a) of the Federal Rules of Civil Procedure requires the trial court to support its orders with specific findings of fact and conclusions of law separately stated. In a previous opinion in the Third Circuit, in *Hook v. Hook and Ackerman, Inc.*, 213 F. 2d 122, Chief Judge Biggs vacated an injunction because of this breach of proper procedure.[11] But, in the instant case, the Court below excuses

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10. See footnote 7 for the appeal made by petitioner's counsel for clarification.

11. Judge Biggs also stated that the District Judge should also have required the parties "to define the issues presented by clear-cut pleadings which conform with the Federal Rules of Civil Procedure". In the instant case, there is a complete *absence* of any pleadings whatever concerning the dispute involved.

the District Judge's refusal to comply with the rule by stating that "this is not an injunction suit". But, even *if* it were *not* an injunction suit, it was still an action tried without a jury. Thus, the mandatory precept of Rule 52(a) must apply. The Court below then excuses this omission as inconsequential. But, it is most consequential, and prejudicially so. Where findings and conclusions properly expressed would tell a defendant that his refusal to work brought about the order and that a subsequent work stoppage would evoke a contempt order, the failure of the Court to take these essential steps is substantial error.[12] The subsequent order and fine demonstrate just this in the instant case. It is obvious that the District Judge thus could not state findings and conclusions or give reasons for his order, since they would necessarily tear away the mask of "specific performance" and leave bare the labor injunction to the prohibition of Norris-LaGuardia.

The same applies to the Court's refusal to comply with F. R. C. P. 65(d), of course. This rule requires *every* injunction or restraining order to set forth reasons for its issuance and to state the acts sought to be restrained. Indeed the Third Circuit had previously held that this rule is mandatory, and that when the rulemakers used "every", they did not mean "anything less than what they said." *Mayflower Industries v. Thor Corporation,* 182 F. 2d 800, 801. But, in line with the caution which had to be observed in order to avoid Norris-LaGuardia, the District Judge likewise failed to comply with this order, too. The Court of Appeals attempts to justify this by saying that "this order is not an injunction" and is "simply" an order that petitioner "comply with" the arbitration award. But, is such an order any less injunctive because the word "enjoin" or "injunction" is omitted? It still orders or prohibits

12. The Court of Appeals states that the District Judge could not file findings and conclusions because petitioner immediately appealed the order. But they should be filed *with* the order, and may be filed even after appeal. *Gibbs v. Buck,* 307 U. S. 66, 83 L. Ed. 1111 (1939).

acts, so that Rule 65(d) clearly applies. It is to avoid being entrapped into *contempt* that the Rule expressed this requirement. The Court of Appeals passes off this error as "minor and in no way decisional". We submit that this omission led petitioner into contempt costing $100,000.00 per day. A more substantial error would be impossible to conceive. This is compounded by the fact that petitioner's counsel actually begged the District Judge to explain his order and state what action he wanted taken or avoided, so that his client could be properly advised.

The Courts below have so far departed from the mandate of the Federal Rules of Civil Procedure and the accepted and usual course of judicial proceedings, as to call for the exercise by this Court of its power of supervision: Rule 19. *Cf., Bruner v. United States,* 343 U. S. 12; *Hickman v. Taylor,* 329 U. S. 495. Upon this ground, also, certiorari should be granted and the decision below reversed.

CONCLUSION.

The decision of the Court below, if allowed to stand, will put the Federal Courts back into the injunction business, contrary to the express provisions of the Norris-LaGuardia Act and in direct conflict with the rule laid down by this Court in the *Sinclair* case. Certiorari should be granted to the end that the decision below be reversed.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
MARTIN J. VIGDERMAN,
FREEDMAN, BOROWSKY AND LORRY,
Counsel for Respondents.

APPENDIX A.

Norris-LaGuardia Act, 29 USCA.

* * *

§ 104. Enumeration of specific acts not subject to restraining orders or injunctions.

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. Mar. 23, 1932, c. 90, § 4, 47 Stat. 70 (Norris-LaGuardia Act).

* * *

National Labor Relations Act.

§ 185. Suits by and against labor organizations—Venue, amount, and citizenship.

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties. Act of June 23, 1947, c. 120, Title III, Sec. 301.

Federal Rules of Civil Procedure.

RULE 52.

FINDINGS BY THE COURT.

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and

conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclutions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b). As amended December 27, 1946, eff. March 19, 1948; Jan. 21, 1963, eff. July 1, 1963.

* * *

RULE 65.

INJUNCTIONS.

* * *

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

APPENDIX B.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Civil Action No. 38647.

PHILADELPHIA MARINE TRADE ASSOCIATION, A NON-PROFIT DELAWARE CORPORATION, BOURSE BUILDING, PHILADELPHIA, PA.,

Plaintiff,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION LOCAL 1291, PIER 4, SOUTH WHARVES, PHILADELPHIA, PA.,

Defendant.

Order.

AND NOW, TO WIT, This 15th day of September, 1965, after hearing, it is hereby ordered, adjudged and decreed that the Arbitrator's Award in the matter of arbitration between the Philadelphia Marine Trade Association and International Longshoremen's Association Local 1291, issued on June 11, 1965, be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award.

By THE COURT,

/s/ RALPH C. BODY, *J.*

APPENDIX C.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15613

PHILADELPHIA MARINE TRADE ASSOCIATION

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
Appellant

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Argued April 14, 1966
Before McLAUGHLIN, HASTIE and FREEDMAN, *Circuit Judges*

Opinion of the Court
(Filed August 11, 1966)

By McLAUGHLIN, *Circuit Judge.*

In this action to enforce an arbitration award under a labor management contract, the trial Court ordered enforcement and the defendant union appeals.

The plaintiff association is a non profit organization comprised of steamship owners, operators, stevedores and the like in the port of Philadelphia. The union is the bargaining agent of the Philadelphia deep sea longshoremen. The bargaining agreement, dated February 11, 1965, applied retroactively from October 1, 1964 and expires Sep-

tember 30, 1968. On April 26, 1965, there was a dispute between the association and the union over the meaning of Section 10, sub. par. 6 of the agreement. The general caption of Section 10 is "Hiring System". Subparagraph (6) reads:

> "(6) Gangs ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM at which time a four hour guarantee shall apply. A one hour guarantee shall apply for the morning period unless employed during the morning period."

The matter was correctly referred to an arbitrator, Milton M. Weiss, Esq. There were three hearings, April 30, 1965, May 3, 1965 and May 5, 1965. At the start of the first hearing the Arbitrator stated:

> "This hearing that we are conducting today, relating to interpretations of a clause of your new contract, from what I understand, between the parties, it has been agreed that it would be carried on in accordance with the usual procedures of The American Arbitration Association. Being a member of that panel, and having conducted hearings along these lines, I will proceed in the same fashion as we do in those cases."

He then said:

> "I think maybe there are a couple of things I would like to say. I think all of us would like, perhaps, to resolve right in the beginning that it is understood between the parties that the determination made by the Arbitrator in this case will be final and binding."

To this Mr. Freedman, counsel for the Union, answered, "That is our understanding. As a matter of fact, that is the understanding of the agreement." Mr. Scanlan,

counsel for the association, answered: "Yes. In accordance with the contract."

A thorough, well reasoned decision was filed by the Arbitrator June 11, 1965. In that opinion the Arbitrator properly stated the "Issue Involved" as follows:

> "Whether the provisions in the Memorandum of Settlement referred to above, i.e. Section 10, subparagraphs 5 and 6, are to be considered together so that the Employer's right to set back a gang from 8:00 A. M. to 1:00 P. M. is conditioned *solely* upon the non-arrival of a vessel in port, or is the Employer's right under Section 10, subparagraph 6 to set back a gang without qualification?"

The Arbitrator ruled:

> "It is the Arbitrator's opinion that this Section 10(6) of the Memorandum of Settlement dated February 11, 1965 is clear and unequivocal and should not be given meaning other than expressed. If the Arbitrator were to read into Section 10(6) the limitation urged on him by the Union, i.e. applicable only in case of non-arrival of a vessel in port, he would in effect be writing into the Memorandum of Settlement something which is not there. The Arbitrator has carefully reviewed the testimony as well as exhibits relating to the negotiations between the parties which resulted in their final agreement. It is quite obvious that the document finally agreed upon was the subject of much discussion and negotiation, and both parties had ample opportunity to modify and change these provisions before the final instrument was drawn. A review of the negotiations set forth above relating to Section 10(5) and 10(6) indicates clearly that there was much discussion and negotiation before the final draft which was contained in the Memorandum of Settlement dated February 11, 1965."

In making his Award, the Arbitrator held:

> "The contention of the Employer, the Philadelphia Marine Trade Association, is hereby sustained and it is the Arbitrator's determination that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, providing gangs 'ordered for an 8 AM start Monday through Friday can be set back at 7:30 AM on the day of work to commence at 1 PM, at which time a 4 hour guarantee shall apply. A 1 hour guarantee shall apply for the morning period unless employed during the morning period,' may be invoked by the Employer without qualification.
>
> "The contention of the Union, the International Longshoremen's Association, Local No. 1291, that Section 10(6) of the Memorandum of Settlement dated February 11, 1965, referred to above, can only be invoked by the Employer because of non-arrival of a vessel in port, is denied."

On July 30, 1965 the Union refused to acquiesce in Nacirema Operating Company, one of the Association employers, setting back an 8:00 A. M. start of work to 1:00 P. M.

According to the testimony which was not denied, the President of the Union, Mr. Askew, advised the executive director of the Trade Association, Mr. Corry, that "the arbitrator's award only applied to non-arrival of a ship." Told by Mr. Corry that "The arbitrator's award applies without qualification," Mr. Corry testified that Mr. Askew replied, " 'It does not' and they were not going to live by it." Mr. Corry stated that Mr. Askew told him he would have to talk to the business agents. Mr. Corry said he did so, to Messrs. Johnson and Devine, that Mr. Johnson did most of the talking "—and Paul Johnson said that they were not going to abide by the arbitrator's decision on the setback, and Mr. Devine as much as said, 'Yes, that's

right,' and that was the extent of my conversation with them."

On August 2, 1965, the Association filed a complaint against the Union in the District Court. This set out the labor agreement between the parties, the Arbitration Award, "that the Union does not agree with the Arbitrator's Award and does not intend to comply with the terms of such award." The complaint went on to allege serious damage to the Employer, the owners and operators of the particular vessel and to the Port of Philadelphia. It stated that "The defendant's refusal to comply with the Arbitrator's Award constitutes a breach of the applicable provisions of the current Collective Bargaining Agreement between P. M. T. A. and the Union." It prayed for an immediate hearing and "an order enforcing the Arbitrator's Award" with "* * * such other and further relief as may be justified." The District Court issued an order to show cause to defendant, "why it has not complied with the Arbitrator's Award of June 11, 1965" and a hearing was set for August 3, 1965, 11 A. M. A motion was filed on behalf of defendant to dismiss the complaint upon the grounds it did not state a cause of action and that the Court was without jurisdiction to grant the relief sought which the motion called "injunctive".

At the hearing counsel for the plaintiff informed the Court that the action was under Section 301 of the Labor Management Relations Act (29 U. S. C. § 185) for enforcement of the Arbitration Award, above quoted, under the bargaining agreement between the parties which the union had refused to abide by in connection with the employer's attempted set back of work on July 30th and that the union's position was that it "would not abide by the arbitrator's award."

Counsel for the union told the Court "We, that is, the union, make no bones about the fact that they are unhappy with the arbitrator's award, but we realize that

we are stuck with it." He insisted several times more that the union would live up to the arbitrator's award. After argument on the question of jurisdiction, the Court held it possessed jursidiction. Contention was made for the union that the employees had to be notified by 7:30 A. M. of a set back. Actually, all the award mentioned about 7:30 A. M. was, as seen above, to repeat the language of 10(6) of the employment agreement providing that the gangs "ordered for an 8:00 A. M. start Monday through Friday can be set back at 7:30 A. M. on the day of the work * * *." There is nothing regarding notification to employees by 7:30 A. M. In passing, that would be a physical impossibility where the set back itself did not take place until 7:30 A. M. This particular argument was not urged at the later hearing nor is it alluded to on this appeal.

At the August 3rd hearing the Court was advised by counsel for the plaintiff that because of the economic problem of keeping the ship idle, the objected to additional wages demanded had been paid and that the men had returned to work. The Court made the following statement:

> "I will keep the matter in hand. I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction, and whatever the situation is, we will handle it at that time.
>
> "So if you don't want to present any more testimony today, on either part, we will just continue the hearing; that's all. It will be continued."

The question of the construction of the Arbitrator's Award again came before the Court on September 13, 1965. At that time the Court said to counsel on both sides:

> "It was my recollection that at the testimony of the last time, I said that I would keep the case in my hands and continue it and hold the matter in my jurisdiction, and with that I think we closed the case.

"Now, I understand from Mr. Scanlan some other facts have arisen which were not in existence at the last time we came in because the men that had not been to work had returned to work at the time you came back for the final hearing. I understand other facts have arisen, so, Mr. Scanlan [counsel for plaintiff], we will give you the oar."

On that occasion four employees of the plaintiff had attempted to set back gangs under the Arbitrator's Award and Mr. Askew, President of the Union, ordered the men to follow different procedures. Plaintiff's dilemma, as outlined to the Court, was that an order was needed requiring the Union to comply with the Award "because we cannot operate in this port if we are going to be continually harassed by the Union in taking the position that they are not going to abide by an Arbitrator's Award, and we cannot continue to live under a situation where from one day to another we do not know whether a similar announcement will be made telling the men not to report for work."

For the defense, it was again asserted that the Court had no jurisdiction, with the further argument that the Award only covered the one dispute then active, i.e. "Every dispute is a different case all by itself." At a further hearing on September 15, the subsequent events making the hearing necessary were narrated by witness for the plaintiff, Mr. Corry, the executive secretary of the Association, who testified, of the Union president's order to the men which in effect countermanded the employers' set backs and stopped work on the four ships concerned. Mr. Corry said that in a talk he had had with Mr. Askew, the latter told him that "* * * the set back only applied to the non-arrival of a ship and he wanted to rearbitrate." Mr. Evans, chief dispatcher for the Association, heard Mr. Askew give his countermanding order and so stated.

There was no testimony on behalf of the Union.

The Court's attention was specifically called to the various statements by counsel for the Union at the previous hearing to the effect that the Union would obey the Arbitrator's Award, particularly to counsel having said to the Court .

> "* * * And the arbitrator decided contrary to the union's position that this setback could be invoked for any reason, not only for non-arrival of a vessel or for inclement weather. It had been the union's position—it still is—although it is moot now—that the setback could only be for specific reasons, either for non-arrival of a vessel, for inclement weather, or for compelling reasons like that which was not within the control of the employer."

It was claimed on behalf of the Union that the Arbitrator's decision governed only the single dispute at that time and did not apply to any other subsequent 10(6) problem. The second point presented was a repetition of the question passed upon by the Court at the first hearing i.e. a denial of jurisdiction on the ground that injunctive relief was being sought.

The Court, holding that the Arbitrator's Award was final and binding in its construction of Section 10(6) of the employment agreement, ordered that the Union specifically enforce it and that it comply with and abide by the said Award.

Appellant argues that this is an injunction proceeding prohibited by the Norris-LaGuardia Act. It relies completely upon Sinclair Refining Co. v. Atkinson, 370 U. S. 195 (1962). That suit concerned an injunction to end the particular strikes involved and work stoppages on nine occasions over a period of almost two years. It categorically holds pp. 213 and 214:

> "The plain fact is that § 301, as passed by Congress, presents no conflict at all with the anti-injunction provisions of the Norris-LaGuardia Act. Obedience to the congressional commands of the Norris-

> LaGuardia Act does not directly affect the 'congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes' at all for it does not impair the right of an employer to obtain an order compelling arbitration of any dispute that may have been made arbitrable by the provisions of an effective collective bargaining agreement."

In that decision the Supreme Court, p. 212, approved of its opinion in Textile Workers Union v. Lincoln Mills, 353 U. S. 448 (1957) which held pp. 458-459:

> "The Congressional policy in favor of the enforcement of agreements to arbitrate grievance disputes being clear, there is no reason to submit them to the requirements of Section 7 of the Norris-LaGuardia Act."

In 1960 in the case of Steelworkers v. Enterprise Corp., 363 U. S. 593, the Supreme Court again ruled that the District Courts, as here, have jurisdiction under Section 301 of the Labor Management Act to order compliance with Arbitration Awards. The Fourth Circuit Court of Appeals, 269 F. 2d 327 (1959) had modified the judgment of the District Court as the Supreme Court said p. 599 "* * * so that the amounts due the employees may be definitely determined by arbitration. In all other respects we think the judgment of the District Court should be affirmed." See also Textile Workers Union v. American Thread Co., 113 F. Supp. 137, 141, 142 (D. Mass. 1953), which was completely approved by the Supreme Court in Lincoln Mills, supra. Local 149 Boot and Shoe Workers v. Faith Shoe Co., 201 F. Supp. 234 (M. D. Pa. 1962) where the Court sustained a § 301 action similar to the one at bar to enforce an Arbitrator's Award. New Orleans S. S. Association v. Longshoremen's Local 1418, 44 CCH Labor Cases 26,602 (E. D. La. 1962) dealt with the same problem with the Court holding:

"However, the parties to the contract agreed to be bound by the decision of the arbitrator, and the plaintiff is entitled to have the award of the arbitrator enforced."

Under the facts and the law, the holding of the District Court that it had the jurisdiction to enforce the crystal clear judgment of the Arbitrator was sound and right. It was not in conflict with the Norris-LaGuardia Act but completely within the Lincoln Mills and Steelworkers opinions, supra, and a vital part of the all important enforcement of the specific performance of the admittedly agreed to arbitration clause in the labor contract before us.

Appellant also complains that the trial Court did not make findings of fact and conclusions of law and give reasons for the issuance of the order and to clarify the nature of the conduct compelled, allegedly in violation of F. R. C. P. 52(a) and 65(d).

The argument is without merit. Appellant's citations from this Circuit are founded on particulars radically different from those before us and are not comparable. We have already held that this is not an injunction suit. It is squarely under Section 301 of the Labor Management Relations Act, 29 U. S. C. § 185. It alleges a breach by defendant of its labor contract with plaintiff in that the former refuses to comply with the Arbitrator's Award under said contract to its damage and asks for an order enforcing the Award; for specific performance of the Award. On August 3, 1965 when the matter had first been heard, because the men were back at work then under circumstances as outlined earlier, the Court said, "I will keep the matter in hand as a judge. If anything arises, I will take jurisdiction and whatever the situation is, we will handle it at that time." In accordance with this, on August 13, 1965 the attorney for the plaintiff reported the new situation to the Court, as above related and the Court thereafter held a hearing at plaintiff's request. This was still under the original

order on defendant to show cause why it had not complied with the Arbitrator's Award. The decision disposed of the rule to show cause by ordering compliance with the Award on the part of defendant. Plaintiff urges that in those circumstances Rule 52(a) does not govern since in reality the decision was on plaintiff's motion under its rule to show cause. Under 52(a), findings of fact and conclusions of law are unnecessary on decisions on motions with the exception of involuntary dismissal motions under Rule 41(b). Plaintiff here makes an impressive point.

And the circumstance that defendant took its appeal the day after the order was and is important. Whether deliberate or not, it precluded the trial Court from entering findings of fact and conclusions of law even if they were required in this instance.

Above all, in the uncontradictable posture of this appeal the error, if any, of not filing findings of fact and conclusions of law was inconsequential. There was no dispute of fact, and no challenge whatsoever of evidence on behalf of the plaintiff. The sole opposition to plaintiff's proofs was the legal argument that the Court did not possess jurisdiction and that the Arbitration Award did not mean what it said and was not of the scope which had been definitely agreed to on behalf of the Union. Factual issues therefore were not validly before the Court and the record fully discloses the in effect admitted facts on which the order was based. Barron & Holtzoff (Wright Rev.), Vol. 2b § 1126 p. 500. The trial Court, on the legal points before it, merely determined the law from the uncontroverted facts, making the absence of formal findings of fact and conclusions of law excusable. United States v. Prendergast, 241 F. 2d 687 (4 Cir. 1956); Rossiter v. Vogel, 148 F. 2d 292 (2 Cir. 1945); Hurwitz v. Hurwitz, 136 F. 2d 796 (D. C. Cir. 1943).

Rule 65(d) F. R. C. P. deals with "Form and Scope of Injunction or Restraining Order". In pertinent part it reads:

"Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; * * *"

The order in question reads:

"And Now to Wit, This 15th day of September, 1965, after hearing, it is hereby ordered, adjudged and decreed that the Arbitrator's Award in the matter of arbitration between the Philadelphia Marine Trade Association and International Longshoremen's Association Local 1291, issued on June 11, 1965, be specifically enforced by defendant, International Longshoremen's Association Local 1291, and the said defendant is hereby ordered to comply with and to abide by the said Award."

As we have indicated this order is not an injunction. Nor can it be reasonably construed as a restraining order. All that it requires is that the defendant affirmatively enforce the Award and comply with and abide by it. It simply calls upon the defendant for specific performance of the Arbitration Award.

Even if it were assumed to be within Rule 65(d), under the facts, the language of the order is fundamentally in accordance with 65(a). Mayflower Industries v. Thor, 182 F. 2d 800 (3 Cir. 1950), cert. den. 341 U. S. 903 (1951), relied on by appellant had to do with an injunction issued under Rule 62(c) pending an appeal. Because no grounds were given for its issuance the injunction was dissolved. The case does not touch the special factors of this controversy. In any event if there is error with respect to 65(d), it is minor and in no way decisional.

Appellant's final point is that the action was moot because plaintiff failed to go to arbitration as required

by the contract and because there was no authority to retain jurisdiction. This needs no extended discussion. The August third episode was not ended legally because the employer was forced to pay the extra money demanded under the economic compulsion of being unable to keep its ship idle. The Court continued the case for the time being against the possibility of a like practical condition arising. The wisdom of so doing developed when an identical type of work disturbance and of more serious proportions broke out on September 13th, was immediately brought before the Court and promptly concluded. The issue was the very same continuing quarrel regarding the governing labor agreement which directly affected the entire Port of Philadelphia.

The thought advanced that the litigation was moot because plaintiff refused to go to arbitration is out of line with the facts and the law. As has been seen the Arbitration Award was not to cover just a single wrangle under 10(6). The Award construed 10(6) itself and held generally regarding set backs that which it so plainly sets forth as above quoted. This, as was admitted for the Union, ended all attempted legitimate divergence of opinion regarding them. It was no failure to arbitrate on the part of the Association that necessitated the Court action. It was rather the deliberate decision of the Union to disregard the Award in the hope of in some fashion restricting it to the first incident of August 3rd, 1965.

The record in this appeal is free of any substantial error. Th eorder of the trial Judge directing specific performance of the Arbitrator's Award was called for by the facts and law of the problem involved. It will be affirmed.

APPENDIX D.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15613

PHILADELPHIA MARINE TRADE ASSOCIATION

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,

Appellant

(D. C. Civil No. 38647)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Present: MCLAUGHLIN, HASTIE and FREEDMAN, *Circuit Judges.*

Judgment.

This cause came to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the District Court (directing specific performance of the Arbitrator's Award) filed September 15, 1965, be, and the same is hereby affirmed, with costs.

ATTEST:

IDA O. CRESKOFF
Clerk

August 11, 1966

APPENDIX E.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15613

PHILADELPHIA MARINE TRADE ASSOCIATION

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291,
Appellant

Before: STALEY, *Chief Judge,* and MCLAUGHLIN, KALODNER, HASTIE, SMITH, FREEDMAN and SEITZ, *Circuit Judges.*

Order.

The petition for rehearing and consolidation in this case is denied.

By THE COURT,

MCLAUGHLIN
Circuit Judge

Date: September 22, 1966

APPENDIX F.

Decision and Contempt Order of District Judge.

March 1, 1966

THE COURT: Gentlemen, this is a difficult case and one involving men who work on the docks.

We have an agreement and it is alleged that that agreement was violated. The matter came before me after the arbitration, after the arbitrator, Mr. Weiss, decided against the Union and its contention. The opinion of the arbitrator, Mr. Weiss, was upheld and I issued an order on September 15, 1965 enforcing that order.

Here we have men hired to do work and then they refuse under the conditions mentioned. They stop work and influence others not to report.

Both sides, of course, have a right to be here. That's the purpose of this Court.

I have heard the evidence presented and the arguments thereon. As long as the Union is functioning as a union, it must be held responsible for the mass action of its members. That means this: When the members go out in the manner in which they did and do an illegal act, the Union is responsible. They can't say, "We didn't do that as Union members." If members of the Union—then they do act under the laws of this country—if it is a mass action, the Union is responsible, and that's what we have here. It is a mass action along the Philadelphia waterfront, and it is illegal to strike under the circumstances, so the Union cannot escape responsibility on the basis that a leader or some of the leaders urged a man or some men or many men to return to work, but they did not return to work.

So in my opinion the Union in effect approved what was done and must be held responsible. They violated the order of this Court and therefore shall be adjudged in civil

contempt. I hold the Union, the officers and the men who participated responsible in contempt of court and at this time civil contempt only.

The fine against the Union will be $100,000 per day effective this date at 2:00 P. M., the first payment to be made within 24 hours to the Clerk of the United States District Court, and every day thereafter as long as the order of this Court is violated.

There will be a further hearing on this matter in the event that anything is desired to be presented by either or both counsel, and I will reserve the time, Monday at 2:00 P. M.

Exception noted.

(Concluded at 6:45 P. M.)